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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,091	03/28/2001	Kenneth W. Nimmons	2817/228	2535

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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 04/10/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary

Application No.

09/820,091

Applicant(s)

NIMMONS, KENNETH W.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5,7-12,14-18 and 32-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5,7-12,14-18 and 32-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's comments on the election of species and reconsideration of claim 6 have been carefully reviewed. Based on the arguments presented by applicant, claim 6 will now be examined along with the remaining claims pending in the present application. Claims 19-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

Claim Objections

2. Claims 13 and 32 are objected to because of the following informalities: It is unclear if applicant has chosen to cancel or amend claim 13, since on page 1 of the amendment filed 1/17/2003, applicant has requested to do both. Correction and clarification is requested. Claim 32 is dependent on claim 13. Note: Claim 13 has been treated as an amended claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4, 7-11, 13-18, 32-40, 42, 43, 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartoli (5,000,447) in view of page 220 of "SPORTS - The Complete Visual Reference book (SPORTS)" and Motoooka et al (5,584,133).

Regarding claims 7 and 8, Bartoli shows a deformable base for use during baseball comprising: a bottom, a top face, and a sidewall attached to the bottom and top face. Bartoli as disclosed above does not expressly indicate if there is any form of identification label attached to top and/or side of the base. Providing identification label(s) on sports paraphernalia is old and conventional, additionally, the location of the identification label raises no criticality and it would work equally as well regardless of where the label is positioned. On page 220 of the SPORTS, The Complete Visual Reference book (SPORTS), a conventional base is shown having an identification label positioned on the top center of the base. It would have been obvious in view of (SPORTS) to have also included an identification label for the base of Bartoli in order to design the base for a particular team or to advertise a particular company.

Bartoli as modified in view of (SPORTS) does not expressly indicate the method and means of applying or positioning the printed image/indicia on the base. There are numerous methods available for applying printed images (indicia) on sports paraphernalia. Motooka et al shows a baseball catching implement having a name plate fitting of rubber or synthetic resin having elasticity affixed to a back member of the implement at any desired position, wherein the name plate fitting includes a frame member having a contour corresponding to that of a name plate. Further, it would have been obvious in view of Motooka et al to have included a nameplate for holding indicia on the modified base of Bartoli so that the indicia could be readily interchanged in order to utilize the base for a plurality of teams or for a variety of advertising companies.

Regarding claims 2-4, see comments on lines 7-10 of claims 7 and 8.

Regarding claims 9-11, see comments on lines 7-10 of claims 7 and 8.

Regarding claims 13 and 14, Bartoli as modified above additionally shows the base to have second, third and fourth sidewalls (see figure 2) forming a square and being attached to the top and bottom face (best shown in figure 1).

Regarding claim 15, Bartoli as modified above additionally shows a post (8) attached to the bottom face of the base.

Regarding claim 16, Bartoli as modified above further shows a plate (10) attached to the post (8); and wherein the combination of the plate and post are embedded into the bottom face of the base. Note: When the combined assembly (plate and post) is embedded in the bottom face, it would inherently create a lip section so that a portion of the plate is securely held on the bottom face (see column 3, lines 1-9).

Regarding claims 17 and 18, Bartoli as modified above additionally shows the resiliently deformable material to be rubber (See column 2, lines 54-61).

Regarding claims 32-34, see comments for claims 13 and 14.

Regarding claim 35, see comments for claim 15.

Regarding claims 36 and 37, see comments for claims 17 and 18.

Regarding claims 38-40, see comments for claims 2-4.

Regarding claims 42 and 43, see comments on lines 7-10 of claims 7 and 8.

Regarding claim 45, see comments for claim 15.

Regarding claim 46, see comments for claim 16.

Regarding claims 47 and 48 see comments for claims 17 and 18.

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5. Claims 5, 6, 12, 41 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of record as applied to claims 2, 9, 38 and 43 and further in view of Kennedy, III et al (6,200,239).

Regarding claim 5, Bartoli as disclosed above, does not show the base to have indicia. Bartoli as modified in view of (SPORTS) shows that it is well known to provide indicia on baseball base. However, the combination, do not disclose the means for applying the indicia on a base. Bartoli as further modified in view of Motoooka et al shows a baseball catching implement having a name plate positioned in a cutout which may be covered with a plate or film of transparent resin for protecting the name plate (10), and wherein the name plate may be secured at any desired position. A film of transparent resin is considered to be art recognized equivalent to a transparent polymer coating. Nonetheless, for the sake of argument, Kennedy, III et al. shows a sports ball, disclosing various methods of applying indicia in the form of a logo on a sports ball. One of the suggested methods is a pressure sensitive hot melt adhesive and another is pressure sensitive adhesive, and alternatively applying a transparent polymer over the indicia for protective purposes (see column 4, lines 29-67). It would have been obvious to one of ordinary skill in the art in view of Kennedy, III et al to have included a coating on the modified base of Bartoli, in order to protect the indicia from contamination.

Regarding claim 6, Bartoli as modified above does not expressly indicate the means of applying the indication means on a baseball base. Official Notice is taken that there are many well-known means and methods of applying indicia on a sports paraphernalia. One well-known method is releasably printing the image on paper or fabric and then applying it to the desired surface either by pressure, heat or a combination of the aforementioned, and it would have been

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obvious to do the same for the modified base of Bartoli in order to make the process more economical.

Regarding claim 12, see comments for claim 5.

Regarding claim 41, see comments for claim 5.

Regarding claim 44, see comments for claim 5.

Response to Arguments

6. Applicant's arguments with respect to claims 2-18 and 32-48 have been considered but are moot in view of the new ground(s) of rejection.

7. In response to applicant's argument that *Motooka et al* and *Kennedy, III et al* are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, *Motooka et al* teaches applying a removable identification plate on a ball catching implement. *Motooka et al* reference shows means of personalizing a baseball paraphernalia, in the present instant it is considered to be relevant art, since applicant is also applying identification label to personalize a baseball base. In the case of *Kennedy, III et al*, again the reference teaches various means of applying indicia on a sports paraphernalia (a basketball). Both prior art references clearly demonstrate the use of personalized identification label on sports objects and various means and methods of applying and protecting the indicia.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703 308 3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703 308 2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7768 for regular communications and 703 305 3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.



Paul T. Sewell
Supervisory Patent Examiner
Group 3700

MA

5 April 2003